



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2022-0211]

RIN 1625-AA00

Safety Zones; Fireworks, Captain of the Port New York Zone

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing five temporary safety zones in the Coast Guard Captain of the Port (COTP) New York Zone for multiple barge based fireworks displays that are scheduled to take place in June of 2022. During the enforcement times vessels will be restricted from portions of navigable waters in the vicinity of the fireworks displays on the Long Island Sound, Hudson River, and Upper New York Bay. The establishment of these safety zones is necessary to protect event participants, waterway users, and vessels, from the potential hazards associated with these scheduled events.

DATES: This rule is effective from 9 p.m. on June 18, 2022, through 11 p.m. on June 28, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2022-0211 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST1 J. Kurian, Waterways Management Division, U.S. Coast Guard; telephone 718-354-4000, email D01-SMB-SecNY-Waterways@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port New York
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The details of these events were not known to the Coast Guard until there was insufficient time to publish an NPRM. Delaying the effective date of this rule to wait for a comment period to run would be impracticable and contrary to the public interest because it would inhibit the Coast Guard’s ability to protect the public and vessels from the hazards associated with barge based fireworks displays. The expeditious implementation of this rule is in the public interest because it will help ensure the safety of event participants, spectators, waterway users, and surrounding vessels.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for

making this rule effective less than 30 days after publication in the **Federal Register**.

Delaying the effective date of this rule would be impracticable and contrary to the public interest because the safety zones must be enforced for the fireworks displays in June of 2022, to mitigate the potential safety hazards associated with these events.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port New York (COTP) has determined that potential hazards associated with barge based fireworks displays will pose a significant risk to public safety and property. This rule is needed to protect personnel, vessels and the marine environment in the navigable waters within the fallout zone immediately before, during and after the fireworks displays.

IV. Discussion of the Rule

This rule establishes five temporary safety zones, which will be enforced for a relatively short duration, on various days throughout June of 2022 as described below. Each event and its corresponding enforcement dates and locations are described below.

(1) Jersey City, Hudson River, Safety Zone Launch site: A barge located on the Hudson River, in approximate position 40°41'08"N, 74°04'10"W, approximately 100 yards east of Caven Point. This safety zone is a 90-yard radius from the barge and will be enforced on June 18, 2022, from 9 p.m. until 10 p.m.

(2) Big Rock Point, Hudson River, Safety Zone Launch site: A barge or floating platform located on the Hudson River, in approximate position 41°53'50"N, 73°57'49"W, approximately 500 yards north of Big Rock Point. This safety zone is a 360-yard radius from the barge and will be enforced on June 25, 2022, from 9:30 p.m. until 11 p.m.

(3) Governors Island, Upper New York Bay, Safety Zone Launch site: A barge located on the Upper New York Bay, from approximate position 40°41'25"N, 74°01'34"W, approximately 365 yards west of Governors Island. This safety zone is a 360-

yard radius from the barge and will be enforced on June 26, 2022, from 9:30 p.m. until 11 p.m.

(4) Little Neck Bay, Long Island Sound, Safety Zone Launch site: Two barges located on Little Neck Bay on the Long Island Sound in approximate position 40°47'38"N, 073°46'13"W, approximately 300 yards east of Fort Totten Park. This safety zone is a 360-yard radius from the barge and will be enforced on June 28, 2022, from 9 p.m. until 10 p.m.

Based on the size and location of each zone, vessels may be able to safely transit around each safety zone in many cases, therefore impact to vessel traffic is minimal. The enforcement of the zones are intended to protect event participants, vessels and surrounding vessels in these navigable waters during these events. No vessel or person will be permitted to enter the safety zones without obtaining permission from the COTP or a Designated Representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on duration and time-of-day and location of the safety zones. These safety zones will restrict vessel traffic from entering or transiting within a relatively small area of navigable waters within the Captain of the

Port New York Zone, immediately surrounding each fireworks barge launch sites.

Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule allows the vessels to seek permissions to enter the zones. Advance public notifications will also be made to local mariners through appropriate means, which may include Local Notice to Mariners and Broadcast Notice to Mariners.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually

and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of five safety zones, which will prohibit entry within a 360-yard radius or less from the fireworks launch. It is categorically excluded from further review under paragraph L60 (a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. Add § 165.T01-0211 to read as follows:

§ 165.T01-0211 Safety Zones; Fireworks, Captain of the Port New York Zone.

The Coast Guard is establishing temporary safety zones for the events listed in Table 1 of this section. The regulations in this section will be enforced for the duration of each event, on or about the dates and times indicated in Table 1 of this section.

(a) *Regulations.* Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in Table 1 of this section unless authorized by the COTP or the COTP's Designated Representative.

(1) To seek permission to enter, contact the COTP or the COTP's Designated Representative via VHF-FM Marine Channel 16, or by contacting the Coast Guard Sector New York command center at (718) 354-4356 to obtain permission.

(2) Information broadcasts. If there are any changes to the enforcement times as listed in this section, the Captain of the Port New York will notify the public of the updated enforcement times through a Broadcast Notice to Mariners and or the Local Notice to Mariners.

(b) *Definitions.* As used in this section, Designated Representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer or other officer operating a Coast Guard vessel and a Federal, State and local officer designated by or assisting the Captain of the Port New York (COTP) in the enforcement of this section.

Table 1 to § 165.T01-0211

Event	Location¹	Enforcement date and time
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1. Jersey City, Hudson River, Safety Zone	Launch site: A barge located on the Hudson River, in approximate position 40°41'08"N, 74°04'10"W, approximately 100 yards east of Caven Point. This Safety Zone is a 90- yard radius from the barge.	June 18, 2022, from 9 p.m. until 10 p.m.
2. Big Rock Point, Hudson River, Safety Zone	Launch site: A barge or floating platform located on the Hudson River, in approximate position 41°53'50"N, 73°57'49"W, approximately 500 yards north of Big Rock Point. This Safety Zone is a 360-yard radius from the barge.	June 25, 2022, from 9:30 p.m. until 11 p.m.
3. Governors Island, Upper New York Bay, Safety Zone	Launch site: A barge located on the Upper New York Bay, from approximate position 40°41'25"N, 74° 01'34"W, approximately 365 yards west of Governors Island. This Safety Zone is a 360-yard radius from the barge.	June 26, 2022, from 9:30 p.m. until 11 p.m.
4. Little Neck Bay, Long Island Sound, Safety Zone	Launch site: Two barges located on Little Neck Bay on the Long Island Sound in approximate position 40°47'38"N, 073°46'13"W, approximately 300 yards east of Fort Totten Park. This Safety Zone is a 360-yard radius from the barge.	June 28, 2022, from 9 p.m. until 10 p.m.

1 All coordinates listed in Table 1 to § 165.T01-0211 reference Datum NAD 1983.

Dated: May 31, 2022

Z. MERCHANT,

CAPTAIN, U.S. Coast Guard,
Captain of the Port New York.

[FR Doc. 2022-12055 Filed: 6/3/2022 8:45 am; Publication Date: 6/6/2022]